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CLERK, U.S. DISTRICT COURT,
SOUTHERN DISTRICT OF CALIFORNIA

BY:

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8 9 United States District Court

10 SOUTHERN DISTRICT OF CALIFORNIA

12 LANTZ ARNELL, MD

Case # '08 - CV- 00441 - LAB - RBB

15 vs.

17 Judge W. McAdam

18 Respondent

14 Notice of Memorandum of Points
15 And Authorities in Opposition to
16 Judge McAdam's Motion to
17 Dismiss.

21 Date: June 16, 2008
22 Time: 11:15 a.m.
23 Room: 9
24 Judge: Honorable William Burns

26 To Ms. Cheryl L Brierton, attorney for Judge William McAdam (herein after
27 defendant): PLEASE TAKE NOTICE that on June 16, 2008 at 11:15 a.m., in
28 courtroom 9 on the 4th floor of the United States District Court for the Southern

CR

1 District of California, located at 940 Front Street, San Diego California before the
2 Honorable Judge William Burns, plaintiff will oppose defendant's Motion to
3 Dismiss plaintiff's complaint (herein after motion) by oral presentation and the
4 filing of these and other papers on the grounds that the motion is fatally flawed.

5 1. Page 1, line 3. of defendant's Memorandum of points and authorities: "To
6 the extent plaintiff is claiming civil rights violations, his complaint is barred..." The
7 Supreme court has held "State officers may be personally liable for damages under
8 42 § 1983 based upon actions in their official capacities." [Hafer v. Melo 498
9 U.S.118 (1991)]. This is a RICO case to which U.S.C. 18 § 2332b may apply.

10 2. Page 1, line 5: "Plaintiff cannot demonstrate the invalidity of his
11 conviction." A plea bargain obtained by coercion and extrinsic fraud can be
12 overturned. However, the plea-bargain is not at issue. The allegations of
13 racketeering and the possibility of organized crime violations of section 2332b are
14 at issue. Appeals are still pending in state court on Lawrence v. Arnell.

15 3. The complaint alleges that each named defendant knowingly agreed to
16 conduct the affairs of an enterprise, that each agreed to the commission of at least 2
17 predicate acts and that they know that are part of a continuing racketeering activity
18 in part because they were trained as lawyers. [Schiffels v. Kemper Financial
19 Services, Inc., 978 F.2d 344 (7th Cir.1992) p. 345 #5]. The allegations are not
20 conclusory according to the RICO conspiracy statutes USC 18 § 1962c, and d. and
21 the requirements set forth in Schiffels v. Kemper (above).

22 4. The complaint is based on evidence of defendants' participation in a
23 continuing criminal enterprise, (herein after CCE). The previous case against this
24 defendant is only important because the complaint was 18 pages and there were 150
25 pages of evidence linking defendant to organized crime submitted as exhibits.
26 "District court's prior order dismissed case without prejudice...dismissal order was
27 final and could not be resurrected." [Lipman v. Dye, 294 F. 3d 17 (1st Cir. 2002)].

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1 5. The pleadings state that a man from another city assaulted the plaintiff
2 with a deadly weapon without saying a word and nothing was said to him. "At this
3 stage, plaintiff's factual allegations are accepted as true and any ambiguities or
4 doubts concerning the sufficiency of the claim must be resolved in favor of the
5 pleader." [Doe v. United States Dept. Of Justice, 753 F. 2d 1092 (1985)].

6 6. All allegations against defendant's used federal statutory language.
7 Scurrilous, [obscenely abusive (Webster's Unabridged Dictionary, second Ed.
8 2001)] language was not used.

9 7. The United States Supreme Court has affirmed that "(state) officers sued
10 in their personal capacity come to the court as individuals..." [Hafer v. Melo
11 (1991) (supra.)].

12 8. The cognizable legal theory is well stated. Defendants were and are
13 continuing to function as central figures in a CCE which has harmed plaintiff's
14 interstate business. Sufficiency of evidence is supplied by defendant's Exhibits A
15 through C. for which defendant requested judicial notice. Those documents support
16 plaintiff's allegations by showing that individuals named in the complaint did
17 perform acts described in the complaint with exact dates, names and places of those
18 acts. The inference is that they were acting in concert.

19 9. The allegation of "judge shopping" cannot apply to this case and was not
20 raised in the previous case. Resurrection of the previous case for that purpose is
21 forbidden by Lipman v. Dye (supra.).

22 10. Judicial Immunity does not preclude a RICO action. In Hafer v. Melo,
23 (supra.), the United States Supreme Court held that "state officials (are not)
24 absolutely immune from personal liability (under federal law) solely by virtue of the
25 official nature of their acts." Rico gets its strength from the commerce clause of
26 the United States Constitution. (Infra.) Even if Judicial immunity did apply, it
27 would only apply to one decision made from the bench and not to defendant's
28 association with organized crime since that decision as is alleged in the complaint.

1 11. Sovereign immunity and Rooker Feldman abstention do not apply when
2 extrinsic fraud is alleged in a racketeering case.

3 a. "Extrinsic fraud on a Court is, by definition, not an error by that court.
4 It is, rather, a wrongful act committed by the party or parties who engaged in the
5 fraud. Rooker Feldman does not bar subject matter jurisdiction when a federal
6 plaintiff alleges a cause of action for extrinsic fraud on a state court and seeks to set
7 aside a state court judgement obtained by that fraud." [*KOUGASIAN v. TMSL, Inc.*,
8 (⁹TH Cir. 2004) 359 F3d 1136,1141] No judicial immunity if judge is a party to the
9 extrinsic fraud.

10 b. The United States Constitution, article 1, section 8, paragraph 3 gives the
11 federal government the exclusive authority to regulate interstate commerce.
12 "Congress shall have the power...to regulate Commerce...among the several states."
13 "Allegations... concerning bribery, extortion and macing by county and political
14 party officials supported civil RICO claim." "...criminal proceedings were
15 instituted against plaintiffs through defendant officials offers to benefit prosecutors'
16 political careers..." [*Rose v. Bartle*, C.A. 3 (Pa.) 1989, 871 F. 2d 331]. The
17 similarities of the current case with *Rose v. Bartle* show that this pattern of
18 racketeering is not new or confined to California.

19 c. "Plaintiff has standing to sue under RICO if complaint alleges injury to
20 business or property proximately caused by overt act in furtherance of conspiracy to
21 violate RICO, even though the overt act is not a predicate act *required* in RICO
22 pattern." [*Schiffels v. Kemper Financial Services, Inc.*, C.A. 7 (Ill.) 1992, 978 F.
23 2d 344].

24 d. "Suits against state officers in their individual capacity for damages for
25 violation of federal law are not deemed actions against the state and are not barred
26 by (sovereign immunity)." [*Scheuer v. Rhodes* (1974) 416 US 232, 237, 94 S. Ct.
27 1683, 1687]. "(Sovereign immunity) is no bar to suit against individual state
28 officers in federal court." **The court has jurisdiction over the person.** [*Hafer v.*

1 *Melo (1991)* 502 US 21, 31, 112 S. Ct. 358, 365] “Indemnification from the state
 2 by itself is not enough to treat actions against state officials as actions against the
 3 state.” [*Ashker v. California Dept. Of Corrections* (9th Cir.1997) 112 F. 3d 392,
 4 395.]

5 e. Section 5 of the 14th Amendment provides that “Congress shall have the
 6 power to enforce, by appropriate legislation, the provisions of this article. This
 7 provision abrogates the state’s immunity from private suits in federal court to
 8 enforce equal protection and due process. [*Fitzpatrick v. Bitzer (1976)* 427 US 455,
 9 456, 96 S. Ct. 2666, 2671]. Extrinsic fraud denies plaintiff access to the courts and
 10 Section 5 of the 14th Amendment is intended to supercede Sovereign immunity with
 11 regards to due process and equal protection.

12 f. The legislative intent of RICO is found in the **Congressional Statement
 13 of Findings and Purpose:**

14 “Section 1. Congress finds that organized crime in the United States **is a**
 15 **highly** sophisticated ...widespread activity that drains billions of dollars from
 16 the American economy by unlawful conduct and the illegal use of force,
 17 fraud and corruption: (3) this money and power are increasingly used
 18 to...subvert and corrupt our democratic processes. (5) Organized crime
 19 continues to grow because remedies available to the government are
 20 unnecessarily limited in scope and impact. It is the purpose of this act to seek
 21 the eradication of organized crime in the United States...”

22 Rico Statute intends to name state officials in lawsuits “to bear” the unlawful
 23 activities of those engaged in organized crime” **and** to use new tools including civil
 24 suits brought by victims **against state officials in district courts** when there is
 25 even circumstantial evidence that those officials have conspired to interfere with
 26 interstate commerce by violating federal laws. CCE crimes are horrific and the
 27 statutory language describing those crimes reflect the concern congress has that
 28 those crimes be eliminated. Congressional intent is to show how a CCE finances

elected officials, including state judges, to protect its nefarious activities.

12. Heck V. Humphrey, a USC 42 section 1983 case, doesn't prohibit RICO actions.

13. The current case is a concise RICO action but because wire fraud and computer hacking transcend national boundaries, USC 18 § 2332b is applicable. “A plaintiff may present hypothetical facts supportable by complaint to establish its sufficiency in face of motion to dismiss...” [Fairmont Homes Inc. v. Shred Pax Corp. N.D. Ind. 1990, 754 F. Supp. 665].

SUMMARY

The pleadings clearly state a claim on which relief can be granted. There is no judicial immunity in extrinsic fraud when the judge is a party to the fraud, and the pleadings are not abusive or irrelevant. Impertinent means irrelevant [Black's Law Dictionary (supra.)]. "In determining motion to dismiss for failure to state claim upon which relief can be granted, court takes as true all factual allegations made in complaint, and construes all reasonable inferences in plaintiff's favor." [*Industrial Specialty Chemicals Inc. v. Cummins Engine Co., Inc.* N.D. Ill. 1995, 902 F. Supp. 805.]

CONCLUSION

The motion is fatally flawed for the following reasons:

20 1. The motion focuses on the wrong case. The previous case against this
21 defendant has been dismissed. The current case is the only case at issue in a motion
22 to dismiss and the current case is based on the RICO statutes which were scarcely
23 addressed and 18 § 2332b which was not mentioned in the motion

24 2. The defendant and many other people in the legal community are
25 indignant when a superior court judge is accused of racketeering. The fatal flaw of
26 the motion is that it embraces these emotions, referring to the allegations as
27 “scurrilous” etc. It should have been based on the law.

28 | 3. Defendant's decision to question plaintiff's motives, refusing to meet and

1 confer even over the phone and avoiding the legal issues raised in the complaint
2 strengthens plaintiff's case. U.S. Supreme Court Justice O'Connor writes "Since
3 *Ex parte Young*, 209 U.S. 123 (1908) we said it has been settled that the 11th
4 Amendment provides no shield for a state official confronted by a claim that he had
5 deprived another of a federal right under the color of state law." [Hafer v. Melo
6 (*supra*)].

Evidence proffered by defendant shows that a U. S. businessman was denied a fair hearing on the merits in state courts. This can't happen unless organized crime

- a. targeted plaintiff's business, and
- b. infiltrated the state judiciary.

Granting defendant's motion to dismiss denies plaintiff a fair trial on the
merits in federal court

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14 | Respectfully, plaintiff requests defendant's motion to dismiss be denied

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Respectfully submitted,

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5/28/08


Lanz Arnell, MD

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POS-040

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Lantz Arnell 1516 Glorietta Blvd Coronado, Ca 92118		FOR COURT USE ONLY
TELEPHONE NO.: 619-435-4064 FAX NO. (Optional): EMAIL ADDRESS (Optional): ATTORNEY FOR (Name):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 220 W. Broadway MAILING ADDRESS: San Diego, Ca. 92101 CITY AND ZIP CODE: Central Court House BRANCH NAME:		
PETITIONER/PLAINTIFF: Lantz Arnell	RESPONDENT/DEFENDANT: Judge William McAdam	CASE NUMBER: 08-CV-00441
PROOF OF SERVICE—CIVIL		
Check method of service (only one): <input checked="" type="checkbox"/> By Personal Service <input type="checkbox"/> By Mail <input type="checkbox"/> By Overnight Delivery <input type="checkbox"/> By Messenger Service <input type="checkbox"/> By Facsimile <input type="checkbox"/> By E-Mail/Electronic Transmission		
(Do not use this Proof of Service to show service of a Summons and Complaint.)		

1. At the time of service I was over 18 years of age and not a party to this action.

2. My address is (specify one):

a. Business:

b. Residence:

416 B. Avenue
Coronado CA 92118

3. On (date): 5/29/08

I served the following documents (specify):

Notice of Opposition To DEFENDANT'S MOTION TO DISMISS.

MEMORANDUM OF POINTS AND AUTHORITY

- The documents are listed in the Attachment to Proof of Service—Civil (Documents Served) (form POS-040(D)).
4. I served the documents on the persons below, as follows:
- a. Name of person served: Monica 1:30 pm
- b. Address of person served: 220 W. Broadway
San Diego, Ca. 92101 --Central Court House
- c. Fax number or e-mail address of person served, if service was by fax or e-mail:
- d. Time of service, if personal service was used:
- The names, addresses, and other applicable information about the persons served is on the Attachment to Proof of Service—Civil (Persons Served) (form POS-040(P)).
5. The documents were served by the following means (specify):
- a. By personal service. I personally delivered the documents to the persons at the addresses listed in item 4.
(1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.

Form Approved for Optional Use
Judicial Council of California
POS-040 (New January 1, 2005)

PROOF OF SERVICE—CIVIL (Proof of Service)

Code of Civ. Proc., §§ 1011,
1015, 1016, 2015.5
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